

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

STEPHANIE PRICE, ET AL.,

Plaintiffs,

vs.

NEW HAMPSHIRE DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
COMMISSIONER, ET AL.,

Defendants.

Case No. 21-cv-25-PB

HEARING REQUESTED

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs Stephanie Price, Kathleen Bates, and Emily Fitzmorris (collectively the “Plaintiffs”) move the Court to certify this case as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) on the following grounds:

1. Plaintiffs are participants in New Hampshire’s Choices for Independence (“CFI”) Medicaid Waiver program who are at serious risk of unjustified institutionalization because Defendants are failing to administer their programs and services in a manner that ensures that Plaintiffs receive the community-based services that they have been determined eligible for and assessed to need. Plaintiffs bring this action on behalf of themselves and hundreds of other CFI Waiver program participants who face the same risk.

2. The Plaintiffs move to certify as a Plaintiff class in this action:

CFI Waiver participants who, during the pendency of this lawsuit, have been placed at serious risk of unjustified institutionalization because Defendants, by act or omission, fail to ensure that the CFI participants receive the community-based long term care services and supports through the waiver program for which they have been found eligible and assessed to need.¹

¹ Plaintiffs have made some minor modifications to the class definition from the proposed class in the Complaint.

3. As explained in the accompanying Memorandum of Law in Support of Plaintiffs' Motion, Plaintiffs' claims readily satisfy the requirements for class certification.

a. The Plaintiff class is estimated to be at least 650 people during any given month, and therefore is so numerous that joinder of all its members is impracticable.

b. Common issues of fact and law predominate the claims of each proposed class member, all arising from Defendants' systemic failure to administer the CFI Waiver program in a manner that ensures that Plaintiffs and other similarly situated people can continue to live in community-based settings instead of being forced to seek care in nursing facilities or other institutions.

c. The Named Plaintiffs' claims are typical of the claims of the proposed class; like the class members, Plaintiffs are unnecessarily placed at serious risk of being institutionalized because of the Defendants' deficient administration of the waiver program, despite the Plaintiffs' ability and desire to continue to live in the community with appropriate services and supports.

d. Plaintiffs and their counsel will adequately represent the class and are ready to vigorously pursue the class's claims.

e. Certification is appropriate under Rule 23(b)(2) because the class has been subject to a common set of practices by Defendant, and the declaratory and injunctive relief sought will provide relief to all class members.

4. Given the complexity of the factual and legal issues presented in the motion for class certification, Plaintiffs believe that a hearing will advance the Court's consideration of the issues and relief sought. Accordingly, Plaintiffs request that the Court allow oral argument on the motion. L.R. 7.1(d).

5. Defendants object to the relief requested in this motion. L.R. 7.1(c).

WHEREFORE, Plaintiffs request that the Court:

- A. Grant this motion and certify the class as defined herein;
- B. Appoint the Named Plaintiffs as class representatives;
- C. Appoint the undersigned counsel as class counsel; and
- D. Grant such other and further relief in favor of the Plaintiffs and Plaintiff class as the Court determines appropriate.

Dated: August 29, 2022

Respectfully submitted,

STEPHANIE PRICE, EMILY
FITZMORRIS, and KATHLEEN BATES,
on behalf of themselves and all others
similarly situated,

By Their Attorneys,

/s/ Mark T. Knights

Mark T. Knights, Esq.

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CERTIFICATE OF SERVICE

I, Mark Taylor Knights, hereby certify that the foregoing *Plaintiffs' Motion for Class Certification* was filed through the ECF system and served electronically on the registered participants identified on the Notice of Electronic Filing (NEF).

Dated: August 29, 2022

/s/ Mark T. Knights
Mark T. Knights, Esq.